IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28/9/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.24056 of 2004
and
WPMP Nos.29199 and 29200 of 2004

A.Kaliaperumal .. Petitioner

-vs-

1. Union Bank of India
rep. by its Chairman cum
Managing Director
239, Vidhan Bhavan Marg
Nariman Point
Mumbai 400 021.
2. The General Manager (HRM)
Union Bank of India
239, Vidhan Bhavan Marg
Nariman Point
Mumbai 400 021.
3. The Deputy General Manager (HRM)
Union Bank of India
239, Vidhan Bhavan Marg
Nariman Point
Mumbai 400 021.
4. Chief Manager
Union Bank of India
96, G.N. Chetty Street
T.Nagar, Chennai 600 017. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.N.G.R. Prasad
for M/s.Row & Reddy

For Respondents : Mr.Somiyaji
Additional Advocate General
for M/s.T.S.Gopalan

:ORDER

Invoking the writ jurisdiction of this Court, the petitioner has come with this writ application seeking a writ of certiorarified mandamus calling for the concerned records relating to the order of the third respondent dated 22.5.2004 bearing Ref.No.HRMD:VPA:2048:2004 and quashing the same insofar as it orders for transfer of the petitioner to Central Zone II, Bhopal of the respondent Bank as illegal, arbitrary, vindictive and in violation of transfer policy for officers of the respondent bank as communicated by the second respondent letter dated 20.1.2004 and consequently directing the respondent to retain the petitioner in Chennai region as per the transfer policy.

2. Affidavit in support of the application and counter affidavit are perused.

3. The case of the petitioner is that he joined the respondent bank on 3.5.1982 as Agriculture Field Officer; that he was posted at Mumbai; that his request for transfer to Chennai was not considered; that he was then transferred to Kerala in the year 1983; that subsequently, during October 1986, he was transferred to Tamil Nadu; that he was transferred to various branches within Madurai Region; that later, he was transferred to Chennai Region; that he was promoted to Middle Management Grade II Officer (MMG II); that the third respondent promoted him to MMG Scale III Officer; that they transferred him to Central Zone II and directed him to report to the Deputy General Manager, Zonal Office, Bhopal, which is arbitrary, vindictive and contrary to the Transfer Policy of the bank; that as per item II of the Transfer Policy, the Officers, who have already served outside the parent State for a period of three years in Junior Management Grade/Scale I and/or Middle Management Grade/Scale II will not be transferred out of the Parent State; that he served for five years outside the Parent State namely Tamil Nadu; that the five Officers namely Sundarrajan, Govindarajulu, Ramanathan, Easwaran and Chobria, who were promoted to MMG III even though they had not served outside the State eversince their joining, have been promoted and posted in Tamil Nadu itself; that apart from that one Rajan, who is junior to him, has also been promoted along with him, but retained in Tamil Nadu; that there are eight vacancies in MMG III post in Chennai itself; that a charge sheet was issued to him in the year 1996 alleging certain irregularities, when he was working as Assistant Branch Manager in Egmore Branch; that he gave a reply to the same; that not satisfied with that, a departmental enquiry was conducted; that the Enquiry Officer found him guilty on ipsi dixi reasons; that he pointed out the defects in the findings of the enquiry officer; that the respondent bank ordered a de novo enquiry; that aggrieved over the same, he filed W.P. No.459/99 before this Court; that this Court allowed the writ petition on 9.7.99, directing the respondent to pass orders based on the earlier findings of the enquiry officer; that in spite of that, the disciplinary authority imposed a punishment of two increments cut with cumulative effect, which, on appeal, was set aside; that his wife is employed as P.G. Assistant in Government Higher Secondary School, Chothupakkam, Tamilnadu, which is a non-transferable post; that he gave a representation to the second respondent on 31.5.2004 to consider his request; that since no steps were taken, he gave another representation on 5.8.2004; that till date they have not considered his representation, and under such circumstances, he has moved this Court by way of writ petition seeking the above relief.

4. The learned Counsel appearing for the petitioner would make the following submissions:

The order of the third respondent in transferring the petitioner to Bhopal is opposed to the Transfer Policy for Officers of the respondent bank as communicated by the second respondent vide letter dated 20 .1.2004. The action of the third respondent is arbitrary. It is pertinent to note that he never objected to the transfers made in the past. His mother is aged 75 years, and she has fallen sick. Except him, there is no other person to look after her. He had worked for five years outside the parent State. Thus, according to the transfer policy, he is not liable to be transferred outside the parent State. Under these circumstances, the order of the third respondent has got to be quashed.

5. The learned Additional Advocate General would submit that the service conditions of the Officers of the bank are governed by the Union Bank of India (Officers) Service Regulations 1979; that Regulation 4 7 provides that every Officer is liable for transfer to any office or branch of the bank or any place in India; that normally, every Officer is liable to serve not only in the parent State, but also outside the parent State/Zone; that in view of the developments including voluntary retirement scheme, a revised transfer policy for officers was circulated; that as per the same, every Officer is liable for transfer outside the State, and transfer would be effected depending upon the exigencies of the bank; that it is pertinent to note that when the petitioner was promoted to the MMG/Scale II, he was not transferred out of the State of Tamil Nadu, which is the parent State; that as far as the State of Tamil Nadu was concerned, there were 31 promotees to the MMG/Scale III, of whom, 9 Officers, who had not served outside the southern zone, were required to be transferred outside the zone, in which they were employed, in order to accommodate Officers, who were eligible to be posted in Tamil Nadu on their completing 3 years tenure outside the State/Zone; that the petitioner along with 8 others had not worked outside the zone in the recent past, and therefore, he was liable to be transferred outside the zone in order to accommodate 9 other promotees, who had served outside the zone for more than three years; that there are no MMG/Scale III vacancy available to be filled up within the Tamil Nadu State; that he has worked only in the State of Tamil Nadu from 1986 onwards; that even on promotion in the MMG/Scale II in the year 1994, he was not transferred outside the State of Tamil Nadu; that the services of Chabria were retained, as he is a physically handicapped Officer; that the other four Officers were not transferred along with the petitioner, and hence, no comparison can be made; that so far as Rajan is concerned, he had served in the Metropolitan Mumbai zone at Mumbai for a period of three years and 6 months on promotion to Officer MMGS-II Cadre; that the petitioner was dismissed from service after domestic enquiry; that the appellate authority reinstated with reduction of two stages in time scale of pay on sympathetic grounds; that he was also served with show cause notices on several occasions; that the fact that his wife is employed in a non-transferable job cannot be a ground to seek retention in his parent State; that there are no vacancies in the State of Tamil Nadu in MMG/Scale III, as alleged by him; that the order of transfer is in conformity with the transfer policy; that there are no merits in the writ petition, and hence, it has got to be dismissed.

6. As could be seen above, the petitioner has brought forth this writ application to quash an order of transfer of the petitioner from a branch of the first respondent at Madras to another branch of the first respondent at

Bhopal. Admittedly, the petitioner joined the services of the respondent bank in the year 1982, and he was transferred to Kerala in the year 1983, wherein he served for a period of 3 + years. Thereafter, he was transferred to the parent State namely Tamil Nadu and promoted as MMG/Scale II in August 1994. It is also an admitted position that for a short period of ten months, he worked in Mumbai. Thus, it is quite evident that he has worked outside the parent State for more than four years. While the matter stood so, the petitioner has been served with the impugned order dated 22.5.2004, wherein he has been promoted to MMG Scale III Officer with effect from 1.6 .2004; but, by the same order, he has also been directed to report to the Deputy General Manager, Zonal Office, Bhopal, for further posting.

7. While accepting the promotion, the petitioner has challenged only that part of the order, which relates to his transfer to Bhopal, on the grounds that it is opposed to the transfer policy for the Officers of the respondent bank, as per the communication of the second respondent dated 20.1.2004; that in view of the completion of four years of service outside Tamil Nadu, as per the transfer policy, the impugned order is arbitrary, mala fide and vindictive; that as many as five of the Officers are retained in Tamil Nadu eversince their date of recruitment, and they have not worked outside Tamil Nadu at all; that there are so many vacancies available within the State of Tamil Nadu; that some of them are being headed by the junior level Officers; that the wife of the petitioner is working in a Government Higher Secondary School, Chothupakkam, Tamil Nadu; that the petitioner has to take care of his 75 years old mother, who is sick, and hence, the transfer order has got to be quashed.

8. In answer to the above, it is contended by the respondents' side that it is true that the petitioner has worked outside the parent State for more than four years; but, there were 31 promotees to the MMG Scale III; that out of them, 9 Officers, who had not served outside the Southern Zone, were required to be transferred outside the Zone, in which they were employed, in order to accommodate the Officers, who were eligible to be posted in Tamil Nadu on their completing the 3 years tenure outside the State/Zone; that the petitioner along with 8 others had not worked outside the Zone in the recent past, and hence, he was liable to be transferred outside the Zone in order to accommodate the 9 other Officer promotees, who had served outside the Zone for more than 3 years. Added further, the learned Additional Advocate General that in the instant case, in order to challenge an order of transfer, the petitioner must show that it was passed mala fide or it is made in violation of the statutory provisions, and in the absence of the same, the writ petition must be dismissed.

9. The revised transfer policy for the officers of the first respondent bank, which would, no doubt, bind the parties, has come into effect from 18.12.2003. The order under challenge has been passed by the third respondent only on 22.5.2004, and hence, the order of transfer should be in conformity with the transfer policy dated 18.12.2003. In the instant case, the transfer of the petitioner by the impugned order is made at the time of his promotion to MMG Scale III Officer with effect from 1.6.2004. It would be more appropriate to reproduce the relevant part of the guidelines, as seen from the transfer policy, which came into effect from 18.12.2003, as follows:

"II. On Promotion:-

On promotion every Officer will be liable for a transfer outside the State.

Officers who are transferred out as per above will be transferred back to their parent State after completion of 3 years of active service.
While considering transfers out of the State, Officers who have completed 55 years will be exempted.
Normally, Officers including female Officers, who have already served outside the parent State for a period of 3 years in Junior Management Grade/Scale I and/or Middle Management Grade/Scale II will not be transferred out of the parent State arising out of the above paras. However, in case their retention in their parent State results in their being supernumerary or hinders the transfers back to parent State of those who have completed 3 years out of their parent State and are due for transfer back to parent State, the above exemption will not in that eventuality be applicable to Officers who have already served outside the parent State for a period of 3 years in whatsoever capacity."

10. A very reading of the above would clearly indicate that on promotion, every Officer would be liable for a transfer outside the parent State, and if the Officers, working outside the parent State, have completed 3 years of active service, then, they would be transferred back to their parent State. It could also be seen that the Officers including female Officers, who have serve d already outside the parent State for a period of 3 years in Junior Management Grade/Scale I and/or Middle Management Grade/Scale II, they would not be transferred out of the parent State arising out of the above paras. In the instant case, the petitioner has served for more than 4 years outside the parent State. According to the petitioner, giving effect to the guideline as found above, he should not be transferred again to any State outside the parent State. On the contrary, it is contended by the Bank that though the petitioner has served outside the parent State for more than 3 years, he cannot be retained in the parent State, since it would be hindering the transferring back to the parent State of those, who have completed 3 years out of their parent State and are due for transfer back to parent State. It is not disputed that there were 31 promotees to MMG Scale III, and out of 31, 9 Officers were required to be transferred outside the zone in order to accommodate the Officers, who were eligible to be posted in Tamil Nadu on their completion of 3 years tenure outside the State/Zone. According to the Bank, the petitioner has not worked outside the zone in the recent past, and hence he has got to be transferred. In the face of the guideline referred to above, which would bind the Bank, they cannot be permitted to state that the petitioner has not worked outside the zone in the recent past, and hence, he has got to be transferred. It is an admitted position that the petitioner has worked for more than 4 years outside the parent State. The word "zone" is neither found nor referred to in the guidelines dated 18.12.2003, and thus, it is an invention of the respondent in order to defeat the contention of the petitioner that he has served for more than 3 + years outside the parent State namely at Kerala.

11. Apart from the above, the petitioner comes with the specific allegation stating that the five named persons, who were promoted to MMG Scale III, though they have not served outside the parent State eversince they joined the respondent bank, have been promoted and posted within the parent State itself; and that number of vacancies are also available in the parent State, and in one place, the petitioner could be accommodated. No convincing reply is forthcoming from the respondents; but, on the contrary, the

respondents have stated that out of 31 promotees, 9 including the petitioner, have to be transferred outside the parent State in order to accommodate the Officers, who were eligible to be posted in Tamil Nadu on their completion of 3 years tenure outside the parent State. But, it remains to be stated that the particulars and details in that regard remain undisclosed.

12. The contention of the petitioner's side that he was subjected to 16 transfers within a period of 22 years of service is not denied by the respondents. It is brought to the notice of the Court that the petitioner's wife is working in a Government Higher Secondary School, Chothupakkam, Tamil Nadu, and the mother of the petitioner aged 75 years, has also fallen sick. Needless to say that such a transfer as made one in question is not only unreasonable, but also would cause harm to the employee.

13. The contention of the management that the petitioner has not shown any mala fide on the part of the third respondent in passing the said order of transfer cannot be countenanced. In the instant case, the petitioner has clearly averred that the impugned order of transfer was an outcome of mala fide and is also able to show that the transfer has not only been made without sufficient reason to justify the same, but also against the transfer policy, and hence, such transfer cannot, but be held only as mala fide. Hence, this Court is of the view that the petitioner is entitled to the relief asked for, and the order of the third respondent dated 22.5.2004, only in relation to the transfer of the petitioner to Bhopal, has got to be quashed, and accordingly, it is quashed. The respondents are directed to give effect to the order of promotion dated 22.5.2004 by posting the petitioner in any one of the vacancies in the parent State within a period of one month herefrom.

14. Therefore, this writ petition is allowed in the above lines. No costs. Consequently, connected WPMPs are closed.

Index: yes

Internet: yes

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Managing Director
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nsv/